

BILL LOCKYER, Attorney General
of the State of California
JOSE R. GUERRERO
Supervising Deputy Attorney General
CATHERINE E. SANTILLAN
Senior Legal Analyst
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5579
Facsimile: (415) 703-5480

Legal Representatives for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation
and Petition to Revoke Probation Against:

CINDY CUDNEY
1851 Hooker Oak Avenue
Chico CA 95926

Respiratory Care Practitioner License No. 21840

Respondent.

Case No. R-2008

**FIRST AMENDED
ACCUSATION AND
PETITION TO REVOKE
PROBATION**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about February 10, 2001, the Respiratory Care Board issued Respiratory Care Practitioner License Number 21840 to Cindy Cudney (Respondent). The Respiratory Care Practitioner License was in effect at all times relevant to the charges brought herein and will expire on January 31, 2007, unless renewed.

DISCIPLINARY HISTORY

3. On October 17, 2000, Statement of Issues No. S-289 was filed against respondent, based on violations of Business & Professions code sections 475(a)(3) and (4) and

1 3750(j) [dishonesty or fraud]. The Statement of Issues alleged that on September 9, 1996,
2 respondent attempted to obtain Vicodin, a controlled substance, in the name of another person.
3 She was arrested for violations of Health & Safety Code sections 11173(a), obtaining a
4 prescription by fraud and Health & Safety Code section 11368, forging and issuing a prescription.
5 The case settled pursuant to stipulation, and respondent was placed on three years probation
6 effective February 10, 2001.

7 4. On August 21, 2002, the Board filed an Accusation and Petition to Revoke
8 Probation (Case No. R-1706) based on violations of Business and Professions code sections
9 3750(f) [negligence], 3750(k) [grossly inconsistent and/or grossly incorrect chart entries], 3750(o)
10 [incompetence], 3755 [unprofessional conduct], and a violation of Probation Condition 5 [failure
11 to obey all laws.] However, pursuant to stipulation, the revocation was stayed and Respondent's
12 probation was extended an additional three (3) years with certain terms and conditions, effective
13 January 9, 2003. A copy of that decision is attached as **Exhibit A** and is incorporated by
14 reference.

15 JURISDICTION

16 5. This Petition to Revoke Probation is brought before the Respiratory Care
17 Board (Board), Department of Consumer Affairs, under the authority of the following laws. All
18 section references are to the Business and Professions Code unless otherwise indicated.

19 6. Section 3710 of the Code states: "The Respiratory Care Board of
20 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
21 the Respiratory Care Practice Act]."

22 7. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
23 revoke licenses to practice respiratory care as provided in this chapter."

24 8. Section 3750 of the Code states:
25 "The board may order the denial, suspension or revocation of, or the imposition of
26 probationary conditions upon, a license issued under this chapter, for any of the following
27 causes:

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1 “(g) Conviction of a violation of any of the provisions of this chapter or of any
2 provision of Division 2 (commencing with Section 500), or violating, or attempting to
3 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
4 violate any provision or term of this chapter or of any provision of Division 2 (commencing
5 with Section 500).

6 9. Section 3750.5 of the Code states:

7 “In addition to any other grounds specified in this chapter, the board may deny,
8 suspend, or revoke the license of any applicant or license holder who has done any of the
9 following:

10 “(a) Obtained or possessed in violation of law, or except as directed by a licensed
11 physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or
12 administered to another, any controlled substances as defined in Division 10 (commencing with
13 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
14 (commencing with section 4015) of Chapter 9.

15 “(b) Used any controlled substance as defined in Division 10 (commencing with
16 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
17 (commencing with section 4015) of Chapter 9. ”

18 10. California Code of Regulations, title 16, section 1399.370, states:

19 “For the purposes of denial, suspension, or revocation of a license, a crime or act
20 shall be considered to be substantially related to the qualifications, functions or duties of a
21 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
22 perform the functions authorized by his or her license or in a manner inconsistent with the
23 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
24 those involving the following:

25 “(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting
26 the violation of or conspiring to violate any provision or term of the Act.”

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1 COST RECOVERY

2 11. Section 3753.5, subdivision (a) of the Code states:

3 "In any order issued in resolution of a disciplinary proceeding before the board, the
4 board or the administrative law judge may direct any practitioner or applicant found to have committed
5 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and
6 prosecution of the case."

7 12. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
9 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,
10 and service fees."

11 13. Section 3753.1 of the Code states:

12 "(a) An administrative disciplinary decision imposing terms of probation may include,
13 among other things, a requirement that the licensee-probationer pay the monetary costs associated with
14 monitoring the probation. "

15 FIRST CAUSE TO REVOKE PROBATION

16 (Abstention)

17 14. At all times after the effective date of Respondent's probation, Condition 2
18 stated:

19 "Respondent shall completely abstain from... any and all mood altering drugs,
20 substances and their associated paraphernalia, except when the drugs are lawfully
21 prescribed by a licensed practitioner as part of a documented medical treatment."

22 15. Respondent's probation is subject to revocation because she failed to
23 comply with Probation Condition 2, and is in violation of Business and Profession code sections
24 3750.5(a) [possession of a controlled substance] and 3750.5(b) [use of a controlled substance], in
25 that she tested positive for controlled substances on two separate occasions. The facts and
26 circumstances regarding this violation are as follows:

27 A. On or about April 27, 2005, respondent was selected to provide a
28 urine specimen for testing and analysis. She tested positive for propoxyphene (trade name

1 Darvocet), which had a reporting limit of 300 nanograms per milliliter. Propoxyphene is a
2 Schedule IV controlled substance. The lab confirmation test results indicate that respondent tested
3 positive for Norpropoxyphene in the amount of 700 nanograms per milliliter.

4 B. On or about December 20, 2005, respondent worked as a
5 respiratory care practitioner from 1500 hours (3:00 p.m.) until 2330 hours (11:30 p.m.). At
6 approximately 1200 hours (12:00 noon), she provided a urine specimen for testing and analysis.
7 The sample tested positive for hydromorphone, a Schedule II controlled substance, in the amount
8 of 700 nanograms per milliliter.

9 16. Therefore, respondent's probation is subject to revocation based on her
10 positive test results for controlled substances in violation of Probation Condition 2, and Business
11 and Profession code sections 3750.5(a) [possession of a controlled substance] and 3750.5(b) [use
12 of a controlled substance].

13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

16 1. Revoking the probation that was granted by the Respiratory Care Board of
17 California in Case No. R-1706 and imposing the disciplinary order that was stayed thereby
18 revoking Respiratory Care Practitioner License No. 21840 issued to Cindy Cudney;

19 2. Revoking or suspending Respiratory Care Practitioner License No. 21840,
20 issued to Cindy Cudney;

21 3. Ordering Cindy Cudney to pay the Respiratory Care Board the costs of the
22 investigation and enforcement of this case, and if probation is continued or extended, the costs of
23 probation monitoring;

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4. Taking such other and further action as deemed necessary and proper.

DATED: January 6, 2006

Original signed by Liane Zimmerman for: _____
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant